

**IN THE SUPREME COURT OF THE
REPUBLIC OF VANUATU – Port Vila
(Civil Jurisdiction)**

Civil Case No. 24/2280 SC/CIVL

Between: Mystery Island Tourism Holdings Limited a
Vanuatu Private local company duly incorporated
under the Companies Act [CAP 125] of 2012 as
amended and has its registered office situated at
Anelguahat, Aneityum, TAFEA province, Republic
of Vanuatu

Claimant

And: Joseph Yasifu trading as Walking Sun Tours, care
of Anelgauhat, Aneityum, TAFEA province,
Republic of Vanuatu

Defendant

Date of Judgment: 25 August 2025
Before: Justice B. Kanas Joshua
Appearance: Mr Silas C. Hakwa, for the claimant
No appearance for the defendant

JUDGMENT

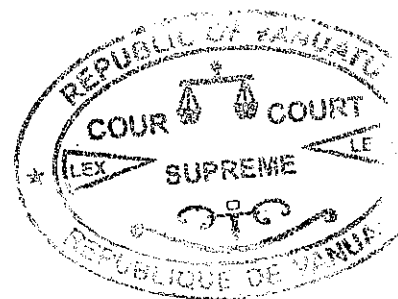
Introduction

1. When an elderly female tourist dies from drowning, during a cruise, it may be seen as a misfortune. But when a second female tourist dies, yet again from drowning, a few months later, the tour operating business comes into question. This is the unfortunate turn of events of Mr Joseph Yasifu, trading as Walking Sun Tours ("**the defendant**"). An investigation identified, amongst other things, that the tour operating business did not have adequate training on safety for its customers, and Mystery Island Tourism Holdings Limited ("**the claimant**") suspended the business permit. Despite having the permit suspended, Mr Yasifu, the tour operator, continues to operate.
2. The claimant is a duly incorporated as a Vanuatu private local company, whose registered company is situated at Anelgauhat, Aneityum.¹ It is duly licensed and authorized to establish, operate, undertake and/or engage in commercial businesses relating to tourism, tours and other related businesses on Aneityum, Mystery Island and other parts of the Vanuatu.² It operates a licencing system under which any other person or entity intending to operate a business on Mystery Island may apply to the claimant for a permit to do so.³

¹ Sworn Statement of Barry Nagia in support of the Claim, Annexure BN1 – filed on 28/3/25.

² Sworn Statement of Barry Nagia in support of the Claim, Annexure BN3 – filed on 28/3/25.

³ Sworn Statement of Barry Nagia in support of the Claim, Annexure BN2 – filed on 28/3/25.



3. The defendant did not attend court on the day of the trial, nor did he attend all the conferences previously held, despite being served directly. He also did not file any response/defence to the claim despite being served with Minutes and Orders of the court directing him to do so.
4. On the day of the trial, Mr Hakwa directed the court to Rule 12.9 of the Civil Procedure Rules⁴. The Rule provides for defendants who fail to attend court when trial starts. The court may adjourn the proceedings, or give judgment for the claimant, or ask the claimant to call evidence to establish that he is entitled to judgment against the defendant.⁵
5. The first witness, Mr Lawrence Silas, who is a director and shareholder of the claimant confirmed service on the defendant on three occasions. I am satisfied that the defendant is well aware of the proceeding, and the trial date, and decided to proceed with trial, without the defendant.

Issues

6. I must decide two issues. Firstly, whether there was negligence and secondly, whether the decision of the MITHL was lawful.

Whether there was negligence by the defendant

7. The defendant trades under Walking Sun Tours on Mystery Island. There are four different tours operation under this business:
 - a. Modern Village & School Cultural Tours;
 - b. 4 in 1 Snorkelling Tours;
 - c. Turtle & Shark Snorkelling Safari; and
 - d. Friendly Turtle Sightseeing Boat Ride.
8. After the first incident it was discovered that the defendant was operating without a permit and did not have any proper and adequate safety equipment or measures in place. In addition, the staff were not sufficiently trained to operate safety equipment. In the second incident, the defendant was operating with a permit given by the claimant.
9. Negligence is the failure to exercise the standard of care that a reasonable prudent person would have exercised in similar situations.⁶ To establish negligence the following elements must be proven:
 - a. Duty of care,
 - b. Breach of duty,
 - c. Causation, and
 - d. Damages.

⁴ No. 49 of 2002.

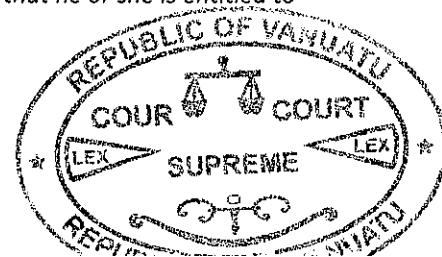
⁵ Rule 12. 9, Civil Procedure Rules No. 49 of 2002:

(1) *If a defendant does not attend when the trial starts:*

(a) *The court may adjourn the proceeding to a date it fixes; or*
 (b) *The court may give judgment for the claimant; or*

(c) *The claimant, with permission of the court, may call evidence to establish that he or she is entitled to judgment against the defendant.*

⁶ Garner, Bryan A. (2014), *Black's Law Dictionary*, Tenth Edition, Thomson Reuters.



10. The duty of care principle is established in *Donoghue v. Stevenson*⁷, where the manufacturers of a company owe a duty of care to its consumers. Similarly, the defendant, as a tour operating business, owes a duty of care to its tourists. This duty was breached when the defendant failed safety standards of operation and employed an underage as a tour guide. As a result, a tourist died and did not enjoy the rest of the cruise. All the elements have been satisfied. The defendant was negligent.

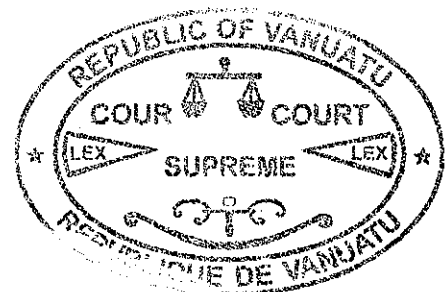
Whether the decision by the claimant is lawful

11. In the first investigation, it was discovered that the defendant was operating without a permit by the claimant. As a result, tour operations by the defendant were terminated and a ban was applied. In the second investigation, it was discovered that the defendant had still not complied with standard safety requirements. The claimant is the company recognized to govern all tour operations on Mystery Island. The defendant and other tour operators are subject to instructions and directions by the claimant. The decision to ban the defendant from operating on Mystery Island after the first investigation is lawful, as the defendant was operating without a permit.
12. However, two months later, the claimant set aside the ban. The reason being that the Tourism Department had confirmed that the defendant would receive training for its tour guides. The claimant has the authority to make such a decision, although as it turned out, a few months later, the defendant did not make efforts to take extra precautions on their tours, leading to the second incident. Needless to say, in both instances, the decisions taken by claimant were lawful.

Conclusion

13. The claimant has proved their claim and is entitled to the relief sought.
14. Judgment is entered for the claimant and it is ordered that,
- The defendant, his employees, agents or associates be evicted from Mystery Island and the sea areas surrounding or adjacent to Mystery Island, and
 - The defendant, his employees, agents or associates be restrained from engaging in, operating or undertaking any business or commercial activity of any kind either on Mystery Island or within any sea areas surrounding or adjacent to Mystery Island, and
 - Orders (a) and (b) are effective for 12 months. After 12 months, the claimant may grant a permit after reviewing the defendant's situation.
 - The defendant is pay costs to the claimant, agreed or taxed. This is to be paid within 28 days of service of this Judgment on the defendant.

⁷ [1932] All ER Rep 1.

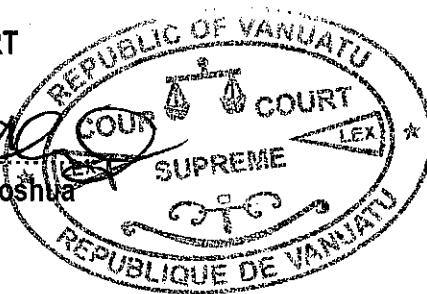


15. In addition, pursuant to Rule 14.37(4) of the Civil Procedure Rules ("the CPR")⁸, I schedule an Enforcement conference at **9:30am on 1 December 2025** to ensure the judgment has been executed or for the defendant to explain how he intends to comply with this judgment. For that purpose, this judgment and a summons in Form 27 of the CPR must be personally served on the defendant, and proof of service filed.

Dated at Port Vila on this 25th day of August, 2025

BY THE COURT


Justice B. Kanas Joshua



⁸ No. 49 of 2002.